IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER
IN
S.B. Civil Second Appeal No.41/1989

Kalu Ram S/o Badri Narain
...plaintiff-appellant
Mathura Prasad S/o Badri Narain
...appellant
Versus
Shri Chhitarmal (since deceased) through L.Rs.
Smt. Dhapa & Others
and Dwarka Prasad & Others
...defendant-respondents

Date of Order ::: 19.12.2006

Present
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Mathura Prasad, appellant No.2, present-in-person with Shri R.P. Agarwal, Advocate, for both the appellants
Shri Ram Kishore, respondent no.1/2, present-in-person, with Shri Bihari Lal Agarwal, Advocate, for respondents no.1/1 to 1/5

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By the Court:-

The plaintiff-appellant filed a suit for redemption of mortgaged and partition in respect of the disputed property. The plaintiff was claiming one-half share in it.

The trial court decreed the suit and redeemed the property up-to the extent of one-half share in it, vide judgment and decree dated 25th of April, 1977. The learned first appellate court set-aside the judgment of the trial court and dismissed the suit. Hence, this second appeal was preferred by the plaintiff-

appellant.

During the course of arguments, both the parties have entered into a compromise and they have also filed a written-compromise in the court duly signed by the appellant no.2 Mathura Prasad, respondent no.1/2 Ram Kishore, Shri R.P. Agarwal, Counsel for both appellant and Shri Bihari Lal Agarwal, Counsel for respondent no.1/1 to 1/5, which is taken on the record.

In terms of the said compromise and as agreed by both the parties, who are present, as well as learned counsel for both the parties, the appeal is disposed of, on the following terms and conditions:-

1. The appellant no.2 Mathura Prasad, shall deposit a sum of Rs.55,000/- (Rupees fifty-five thousand only) by way of bank-draft in the name of respondent no.1/2 Ram Kishore in the trial court, within a period of one month from today i.e. on or before 20th of January, 2007.

2. The appellant no.2 Mathura Prasad is already in possession of the disputed shop and the respondents will handover the possession of remaining portion i.e. room and staircase to the appellant no.2. The trial court has passed a decree of one-half share of the disputed property but, in terms of the compromise, the appellant no.2 will be entitled to complete property and not the one-half share, as decreed by the trial court, within a period of six

weeks from today.

3. The respondent no.1/2 Ram Kishore will be entitled to withdraw the bank-draft of the aforesaid amount to be deposited by the appellant no.2 Mathura Prasad in the trial court, after handing-over the possession of the disputed entire property i.e. remaining room (Choubara) and staircase (the shop is already in the possession of the appellant no.2) to the appellant no.2, but before withdrawing the amount from the court, he will file an affidavit of respondents no.1/1, 1/3 to 1/5 or their power-of-attorney in his favour.

The trial court is directed to accept the bank-draft of Rs.55,000/- in the name of respondent no.1/2 Ram Kishore from appellant no.2 Mathura Prasad, as directed above, and to keep the same in the custody of the court itself. The bank-draft shall be delivered to respondents no.1/1 to 1/5 or to respondent no.1/2 Ram Kishore, if he furnishes the affidavits or power-of-attorney of theirs in his favour. Before delivery of bank-draft, the learned trial court will satisfy itself that the appellant no.2 Mathura Prasad has received the possession of the entire property, as stated above, from the respondents no.1/1 to 1/5, as per terms of the compromise.

It is made clear that in case the appellant no.2 fails to deposit the bank-draft of Rs.55,000/-, as directed above, on or before 20.1.2007, then this appeal will be deemed to have been dismissed

automatically and, in case, the respondents do not deliver the possession of the disputed property to the appellant within a period of six weeks, as directed above, then the present appeal will be deemed to have been allowed and it will be deemed that the judgment of the first appellate court is set-aside and the judgment of the lower court is restored and it will be open for the appellant no.2 to take back the bank-draft of Rs.55,000/-, deposited by him in the trial court.

A copy of the compromise dated 19.12.2006, filed in the court, will form part of this order.

The parties shall bear their own costs.

(Narendra Kumar Jain) J.

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